REMARKS

Claims 1-20 and 23-25 are currently pending in this application. Claims 1, 24 and 25 have been amended. Claim 22 has been canceled. Applicant has carefully reviewed the Office Action and requests reconsideration of the claims in view of the remarks presented below.

Double Patenting

Claims 1-20 and 22-25 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9, 11, 13-20 and 23-25 of copending application serial no. 10/782,684.

Regarding claims 1-20 and 23-25, Applicant herein submits a Terminal Disclaimer disclaiming the terminal part of the statutory term of any patent granted on the present application, which would extend beyond the expiration date of the full statutory term of any patent issuing from co-pending application serial no. 10/782,684. In view of the Terminal Disclaimer, and the remarks below, it is respectfully submitted that claims 1-20 and 23-25 are in condition for allowance.

Claims Rejections Under 35 U.S.C. §102

Claims 1-6, 9, 10, 12-14, 22 and 24 were rejected under §102(a,e) as being anticipated by U.S. Patent Publication 2003/0144595 (Lade).

Independent claim 1 recites an implantable medical device comprising an implantable housing having therein a temporary memory and a long-term memory interfacing with the temporary memory and a processor operative to control the recording of diagnostic data such that no data is recorded in the temporary memory until the detection of an impending cardiac arrhythmia, wherein the cardiac arrhythmia indicated as impending, is not currently present and no data is transferred from the temporary memory and recorded in the long-term memory until it has been determined that a cardiac arrhythmia did actually occur.

Independent claim 24 relates to implantable medical devices having a controller that controls the recording of diagnostic data such that no data is recorded in a temporary memory until the detection of predetermined recording triggers indicative of an impending cardiac arrhythmia, wherein the cardiac arrhythmia indicated as impending, is not currently present, and no data is transferred from the temporary memory and recorded in a long-term memory until it has been determined that a cardiac arrhythmia did actually occur.

Lade describes that data in memory 94 (purported in the Office Action to correspond to Applicant's temporary memory) is stored until it is downloaded to an external device 102 (purported in the Office Action to correspond to Applicant's long-term memory). There are, however, no conditions placed on this download. For example, Lade does not specify that no diagnostic data is transferred from the temporary memory (Lade memory 94) and recorded in the long-term memory (Lade external device 102) until it has been determined that a cardiac arrhythmia did actually occur, as included in claims 1 and 24. In fact, it appears any transfer of data between Lade's memory 94 and external device 102 is unconditional and is performed at the will of a clinician. See paragraph [0041].

Regarding canceled claim 22 (which has been partially incorporated into claim 1) the Office Action states that Lade discloses confirming a suspected arrhythmia prior to transferring data and cites paragraph 0058 [sic] in support. The confirmation described in paragraph [0059] and shown in figure 5 relates to the transmitting of a signal to another device for delivering vasovagal syncope therapy. There is not transmission of diagnostic data corresponding to a cardiac rhythm in response to this confirmation. Furthermore, as alluded to in the preceding paragraph, throughout Lade it is clear that condition (e.g. syncope or arrhythmia) confirmation precedes storage of data in temporary memory and that transfer of data from temporary memory is unconditional. See e.g., figure 4, wherein confirmation (step 370 or 383) precedes data storage in memory 94 (step 385) and transfer to external memory (step 390) occurs without condition. Also see figure 8.

Lade also describes a data acquisition system 90 for storing digital signals corresponding to ECG signals and a microprocessor for temporarily storing physiological signals. See paragraphs [0033] and [0045]. Lade, however, does not describe any conditions under which data is not stored or recorded in either the data acquisition system or microprocessor. More specifically, Lade does not teach controlling the recording of diagnostic data such that no data is recorded in the data acquisition system or microprocessor (i.e., temporary memory) until the detection of an impending cardiac arrhythmia, wherein the cardiac arrhythmia indicated as impending, is not currently present – as recited in claims 1 and 24. In fact, it appears that data is continuously stored in these memories on a FIFO basis. See last sentence of paragraph [0045].

In view of the foregoing, Applicant submits that Lade fails to disclose the combinations of elements and features recited in independent claims 1 and 24. Accordingly, Applicant requests reconsideration of the §102 rejections of these claims and their respective dependent claims.

Claim Rejections Under 35 U.S.C. §103

Claims 7, 8 and 15-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lade in view of Legal Precedent. Claim 11 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lade in view of Official Notice.

In view of the foregoing analysis of independent claim 1 in view of Lade, Applicant believes that the rejections under §103 are rendered moot as dependent claims 7, 8, 11 and 15-20 depend from allowable independent base claim 1.

Claims 23 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lade.

Independent claim 23 relates to a method performed by an implantable medical device and involves controlling the recording of diagnostic data such that diagnostic medical data is first recorded in an implanted temporary memory only after it is determined that a cardiac arrhythmia that is not currently present is likely to arise;

determining whether the impending cardiac arrhythmia actually occurred; and if such cardiac arrhythmia did actually occur, transferring the diagnostic data recorded in the implanted temporary memory to the implanted long-term memory.

Independent claim 25 relates to implantable medical devices having means for controlling the recording of diagnostic data such that no data is recorded in means for temporarily storing data until the detection of predetermined recording triggers indicative of an impending cardiac arrhythmia, wherein the cardiac arrhythmia indicated as impending, is not currently present, and no data is transferred from the means for temporarily storing data and recorded in means for long-term storage of data until it has been determined that a cardiac arrhythmia did actually occur.

As stated above, Lade describes that data in memory 94 (purported in the Office Action to correspond to Applicant's temporary memory) is stored until it is downloaded to an external device 102 (purported in the Office Action to correspond to Applicant's long-term memory). There are, however, no conditions placed on this download. For example, Lade does not specify that no diagnostic data is transferred from the temporary memory (Lade memory 94) and recorded in the long-term memory (Lade external device 102) until it has been determined that a cardiac arrhythmia did actually occur, as included in claims 23 and 25.

Lade also describes a data acquisition system 90 for storing digital signals corresponding to ECG signals and a microprocessor for temporarily storing physiological signals. See paragraphs [0033] and [0045]. Lade, however, does not describe any conditions under which data is not stored or recorded in either the data acquisition system or microprocessor. More specifically, Lade does not teach controlling the recording of diagnostic data such that no data is recorded in the data acquisition system or microprocessor (i.e., temporary memory) until the detection of an impending cardiac arrhythmia, wherein the cardiac arrhythmia indicated as impending, is not currently present – as recited in claims 23 and 25. In fact, it appears that data is continuously stored in these memories on a FIFO basis. See last sentence of paragraph [0045].

In view of the foregoing, Applicant submits that claims 23 and 25 are patentable over Lade. Accordingly, Applicant requests reconsideration of the §103 rejections of these claims.
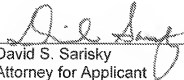
<div align="center">CONCLUSION</div>

Applicant has made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. Therefore, allowance of Applicant's claims 1-20 and 23-25 is believed to be in order.

Respectfully submitted,

5 JUN 2008
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Date

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